

UTAH LEAGUE OF CITIES & TOWNS
BOARD OF DIRECTORS MEETING
50 SOUTH 600 EAST, SUITE 150, SALT LAKE CITY, UT 84102 & VIA ZOOM
MONDAY, FEBRUARY 19, 2019 @ 9:00 AM
(TIMES ARE APPROXIMATE)

1. **Welcome and Introductions – Mayor Jon Pike, ULCT President** **9:00 AM**

2. **Conflict of Interest Disclosure – Mayor Jon Pike, ULCT President** **9:05 AM**
ACTION: Disclosure of any potential conflict of interest with agenda items
HANDOUT: None

3. **Key Legislative Issues – Cameron Diehl, Executive Director
& Rachel Otto, Director of Government Relations** **9:10 AM**
 - Referendum
 - Sales Tax
 - OthersACTION: Review & Adoption of Staff Positions on Bills
HANDOUT: [Memo on Referendum](#)
[Sales Tax Changes Talking Points](#)
[Staff Positions on Current 2019 Bills \(via online bill tracking\)](#)

4. **Closed Session (if needed) As per Utah Code 52-4-205** **11:15 AM**
ACTION: Vote required to enter closed session (as per Utah Code 52-4-204)
HANDOUT: None

5. **Other Business**
ACTION: For Information Only
HANDOUT: None

6. **Adjourn**

TO: ULCT Board of Directors
FROM: Cameron Diehl, Executive Director
DATE: February 11, 2019
SUBJECT: Referendum Update

Since our last meeting on January 30, we have made progress on local referendum and HB 119. This memo will outline the key improvements to the referendum process highlight two major unresolved points on referendum—signature thresholds and communication—and **request your feedback (the questions are in red below)**.

I've reviewed input from the Property Rights Coalition, Utah Association of Counties, referendum organizers from Orem, and ULCT members from our referendum working group in 2017 about HB 119.

I) Process

Highlights about the improved process (either in the draft or to be drafted):

- Adjudication of legislative or administrative prior to signature gathering
- Consistency about business days and calendar days
- Tightening of the time frames
- Signature gatherers must wear a badge identifying themselves and their city of origin
- Signature gatherers must carry information about the law and the referendum
- Signature gatherers must turn in their signatures within a certain date of the affixed signatures so that the county can review them in a timely manner
- Signatories no longer need to notarize their signature removal request

II) Signature thresholds

Rep. Daw has been receptive to the concept of geographic diversity and it is a major priority for House leadership. At the January 30 board meeting, you requested two things. First, you requested that signature thresholds slightly increase for cities of the fifth class and towns without any geographic requirements. Second, you requested that cities of the first, second, third, and fourth classes (10,001+ population) have geographic diversity requirements in a manner that would not conflict with city councils who are elected at-large. I committed to look at precinct-based approach first before looking at some type of district-based approach.

All stakeholders agree with slightly increasing the thresholds for cities of the fifth class and towns. They are currently at 25% of presidential voters for fifth class and 30% of presidential voters for towns. We have not identified the potential new percentage yet.

For larger cities, the only way to make geographic diversity work is to have districts that meet the constitutional “one person, one vote” standard. For cities like Holladay, Salt Lake, and South Jordan, they have such districts. More than 230 cities and towns elect their councils at large which means constitutional districts must be created. I've renamed them zones to keep them separate from city

council districts. Precincts are administrative tools that vary in size and shape so they do not meet the “one person, one vote” standard. Here are the potential options for your consideration:

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Option 1: Property Rights Coalition proposal: 5-7 Voter Participation Zones (VPZs) based on the number of at-large council members that the state would require cities of 4th class and higher to create

- Pros: local responsibility to create our own zones
- Cons: unfunded mandate on city to create maps for one-man, one-vote zones particularly before the census; maps & budget for maps would be referable

Option 2: Create 8 zones (does not align with any district size) and need 7/8 (87.5%) to match the 26/29 (89.6%) or default to local district of 4-7 sizes

- Pros: the quantity is independent of the size of any city council in the state which avoids the insinuation that zones should become city council districts
- Cons: Same as Option 1

Option 3: Locals could do option 1 or 2 or use the new Utah Independent Redistricting Commission to draw VPZs (20A-19-201)

- Pros: state funds it if city defers to state, provides non-referable option
- Cons: does the Utah Legislature have to approve the VPZs or could the state draw maps that locals then approve? Does that violate our principles of local autonomy? The local approval is still referable.

Option 4: Locals could do option 1 or 2 or counties would draw the zones using precincts or subprecincts as a model

- Pros: no state oversight
- Cons: counties will balk at the cost and duty and we would lose autonomy

Note: there is legislation this year to force the counties to draw precincts according to a constitutional standard. I met with the bill sponsor last week and with the county clerks twice in the last two days to try to figure out if this is a possibility.

Board members: what do you think about these options for geographic diversity?

III) Communication

The biggest remaining hurdle is how to define the communication between the city and residents, particularly the issues of city information v. advocacy, the definition of equal access, and the use of public funds. The PRC's Mike Ostermiller, to his credit, was a strong advocate for the ability of cities to be transparent with residents about why the council voted the way they voted. Rep. Daw has said that a major priority for him was to improve the information available for voters.

I have argued for the ability of city leaders to explain why they acted the way they acted and share the city prepared information that influenced their decision at the dais. At one point, the organizers agreed that the more information in the public square, the better. They later reversed themselves on that point because they didn't trust cities to play fair. Rep. Daw advocated for our ability to answer questions about the referendum throughout the process despite their pushback. While we unsurprisingly did not reach consensus on communication, they at times seemed open to more city communication as long as it was "balanced" by equal access. What that actually looks like is still the great unknown.

Consequently, here are the sticking points on communication:

- 1) If restrictions exist, should they focus on the content, timing, messenger, or platform of the communication?
 - a. **Content:** information/education v. advocacy/campaign
 - i. What is the user-friendly and enforceable line between education and advocacy?
 1. Petitioners are by definition advocating.
 2. Arguments in voter info pamphlet are advocacy.
 - ii. What factual information should be part of the marketplace of ideas?
 1. City-prepared legal/fiscal analysis.
 2. City ability to answer questions.
 3. Elected officials being able to explain why they voted the way they voted.
 - a. The city produced information prior to the referendum petition that influenced the elected officials' votes. Current law forces cities to leave that information on a shelf.
 - b. **Timing:** signature gathering v. election cycle
 - i. At what point should communication restrictions apply? (note: Utah Supreme Court is considering this question as I type)
 - c. **Messenger:** elected official, city staff, petitioners, signature gatherers
 - i. For example, Should a signature gatherer have a duty to provide factual information to a resident?
 - d. **Platform:** use of public expenditures or public email, pamphlets (500/250 words), public meeting, equal access
 - i. When should the penalties in the Political Activities of Public Entities Act apply?
- 2) What does **"equal access"** really mean?
 - a. Does equal access mean that a city must provide pro-referendum information at every occasion where the city communicates with residents?
 - b. Does equal access mean that the city cannot speak more than what the organizers are entitled to speak?
 - c. Does equal access mean that a city can't comment at a public meeting if they invite opponents and the opponents do not participate? Does equal access = equal results?
 - d. Does the enforcement of equal access raise 5 unelected petitioners to the same level as elected officials?

What if the city website became a one-stop-shop for the referendum? The city posts all of the information that influenced the initial council vote and links and info that the referendum organizers want. The result would be more information for the public with equal access, even if the city provides more information than the organizers provide.

Here are my final two questions for you. **Of the aforementioned policy interests at play—content, timing, messenger, platform, equal access—and in the effort of improving the city's ability to communicate with residents, what do you care most about? How do you prioritize those interests?**

To sum, please consider my questions about geographic diversity and communication and email me your thoughts. Please be prepared to discuss them at the Tuesday, February 19 board conference call.

Sales Tax Changes: Talking Points

1. Can you provide any update on discussions to expand the sales tax base? Note: Expanding the sales tax base means taxing services that are currently not subject to the sales tax.
2. Has there been any discussion about decreasing sales tax rates in the event the base is expanded.
 - i. The state sales tax rate is not the only sales tax rate imposed in Utah. All Utah cities impose a 1% tax that is a primary funding source for cities' general fund.
 - ii. In addition, some cities impose a ZAP or RAP tax. A few are authorized to impose a resort community tax. Then there a number of specialized tax rates for transportation.
 - iii. Has there been any discussion about what action may be taken to adjust these rates.
3. "50/50" Distribution Formula
 - i. The 1% rate that all Utah cities impose has a unique feature. Fifty percent stays with the city where a sale takes place (point of sale). The other fifty percent is distributed among all cities based on population. Has there been any discussion about changing this distribution formula?
 - ii. The distribution formula is a policy that Utah cities are very concerned with changing.